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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. **2011-121**
A C C U S A T I O N

12 **CHARLES W.M. BLANKENSHIP**
13 **1967 Newport Blvd.**
14 **Costa Mesa, CA 92627**

15 **Registered Nurse License No. 441591**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about July 31, 1989, the Board of Registered Nursing issued Registered Nurse
24 License Number 441591 to Charles W.M. Blankenship (Respondent). The Registered Nurse
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on May 31, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code (Code) provides that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

"Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

"(a) Considering the denial of a license by the board under Section 480; or

"(b) Considering suspension or revocation of a license under Section 490.

"Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

7. Section 490 of the Code provides that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the

1 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
2 and the board may inquire into the circumstances surrounding the commission of the crime in
3 order to fix the degree of discipline or to determine if the conviction is substantially related to the
4 qualifications, functions, and duties of the licensee in question.

5 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
6 'registration.'"

7 9. Section 2761 of the Code states:

8 "The board may take disciplinary action against a certified or licensed nurse or deny an
9 application for a certificate or license for any of the following:

10 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

11 ". . . .

12 "(4). Denial of licensure, revocation, suspension, restriction, or any other disciplinary action
13 against a health care professional license or certificate by another state or territory of the United
14 States, by any other government agency, or by another California health care professional
15 licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that
16 action.

17 ". . . .

18 "(e) Making or giving any false statement or information in connection with the application
19 for issuance of a certificate or license.

20 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
21 functions, and duties of a registered nurse, in which event the record of the conviction shall be
22 conclusive evidence thereof.

23 ". . . ."

24 10. Section 2762 of the Code states:

25 "In addition to other acts constituting unprofessional conduct within the meaning of this
26 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
27 chapter to do any of the following:

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1 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
2 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or
3 administer to another, any controlled substance as defined in Division 10 (commencing with
4 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
5 defined in Section 4022.

6 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
7 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
8 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
9 himself or herself, any other person, or the public or to the extent that such use impairs his or her
10 ability to conduct with safety to the public the practice authorized by his or her license.

11 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
12 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
13 or the possession of, or falsification of a record pertaining to, the substances described in
14 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
15 thereof.

16 ". . . ."

17 11. Section 2765 of the Code states:

18 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
19 charge substantially related to the qualifications, functions and duties of a registered nurse is
20 deemed to be a conviction within the meaning of this article. The board may order the license or
21 certificate suspended or revoked, or may decline to issue a license or certificate, when the time
22 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an
23 order granting probation is made suspending the imposition of sentence, irrespective of a
24 subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person
25 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict
26 of guilty, or dismissing the accusation, information or indictment."

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REGULATIONS

12. California Code of Regulations, title 16, section 1444, states:

"A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

"(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

"(b) Failure to comply with any mandatory reporting requirements.

"(c) Theft, dishonesty, fraud, or deceit.

"(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code."

13. California Code of Regulations, title 16, section 1445 provides:

". . . .

"(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

"(1) Nature and severity of the act(s) or offense(s).

"(2) Total criminal record.

"(3) The time that has elapsed since commission of the act(s) or offense(s).

"(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

"(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

"(6) Evidence, if any, of rehabilitation submitted by the licensee."

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COST RECOVERY

14. Section 125.3 of the Code provides that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(June 3, 1999, Conviction for DUI on April 15, 1999)

15. Respondent is subject to disciplinary action under Code sections 490 and 2761, subdivision (f), on the grounds that he was convicted of a crime substantially related to his qualifications, functions and duties as a registered nurse. The circumstances are as follows:

a. On June 3, 1999, in a criminal case entitled *The People of the State of California v. Charles William Blankenship*, Riverside County Superior Court, case number INM093684, Respondent was convicted by his plea of guilty to violating Vehicle Code section 23152, subdivision (a), a misdemeanor, driving under the combined influence of alcohol and a drug, and Vehicle Code section 23152, subdivision (b), driving a vehicle having more than 0.08 percent of alcohol (BAC) in his system (0.20 percent), misdemeanors.

b. The circumstances that led to the conviction are that on April 15, 1999, in Cathedral City, Riverside County, California, Respondent side-swiped another car driving in the opposite direction on Victoria Drive. The driver of the other car asked Respondent to wait until the police came to the collision scene as she noticed he was intoxicated, but he refused and started to drive away. She followed Respondent one block to Marcia Road where he pulled into a driveway at the end of the street. When Respondent tried to back up to leave, she blocked the way until the police arrived. When questioned by a Cathedral City police officer, Respondent admitted that he had been drinking that night. Respondent was placed under arrest for driving under the influence of alcohol. At the Cathedral City Police station, Respondent completed breath tests that yielded a blood alcohol concentration (BAC) of .22 and .20 percent.

c. On June 3, 1999, Respondent was sentenced to summary probation for 36 months, ordered to violate no law or ordinance, pay various fines and fees, complete an Assembly Bill 541 1st Offender DUI Program, and have his license restricted for 90 days.

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1 Respondent chose a breath test, which resulted in a .16 percent BAC level. Respondent was later
2 released with a promise to appear.

3 c. As a result of the conviction, Respondent was sentenced to informal probation for
4 5 years, ordered to serve 40 days of Caltrans service in lieu of 45 days in jail, violate no law, pay
5 various fines and fees, complete and show proof of AA meetings every week, not to drive without
6 a valid driver's license and insurance, not to drive with alcohol or drugs in his system, submit to a
7 chemical test of blood, breath, or urine on demand, complete an 18 month Multiple Offender
8 Alcohol Program, and other terms including fines and fees.

9 On February 7, 2006, a hearing was held on a probation violation and probation was
10 revoked. The court ordered bail set in the amount of \$15,000.00, Respondent was remanded to
11 the custody of the Sheriff, and this case was ordered to be kept with companion case
12 06HM01013, which is referenced in the Fourth Cause for Discipline, below. A hearing was held
13 on February 22, 2006, for the probation violation disposition and reset, and Respondent admitted
14 violation of probation. The court ordered probation reinstated and modified as follows: complete
15 Caltrans duty and file proof of completion, payments were modified with \$100.00 payments due
16 on the 24th of each month starting on February 24, 2006, Respondent was remanded to the
17 custody of the Sheriff and then released on this case only. On February 28, 2006, May 18, 2006,
18 July 3, 2006, November 3, 2006, February 5, 2007, hearings were held and probation was
19 modified with the final modification of probation hearing heard on April 18, 2007, whereupon
20 probation was again modified as follows: the jail weekend sentence was vacated and the balance
21 of the original 40 days sentence imposed on January 24, 2006, was now reimposed, and
22 Respondent was ordered to be committed to 40 days in jail, with credit for 17 days. Respondent
23 was remanded to the custody of the Sheriff.

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FOURTH CAUSE FOR DISCIPLINE
(February 22, 2006, Conviction for Domestic Battery
with Corporal Injury on February 5, 2006)

18. Respondent is subject to disciplinary action under Code sections 490 and 2761, subdivision (f), on the grounds that he was convicted of a crime substantially related to his qualifications, functions and duties as a registered nurse. The circumstances are as follows:

a. On February 22, 2006, in a criminal case entitled *The People of the State of California v. Charles William Blankenship aka Charles William Blankenslip aka Chuck Blankenship aka Chuck Blackenship*, Orange County Superior Court, Harbor Justice Center, Newport Beach Facility case number 06HM01013, Respondent was convicted on his plea of guilty for violating Penal Code section 273.5, subdivision (a), battery on co-habitant, a misdemeanor. Respondent admitted that on February 5, 2006, in Orange County he willfully and unlawfully committed a battery resulting in a traumatic condition upon a person with whom he was cohabitating.

b. The facts that led to the conviction are that on February 5, 2006, a Costa Mesa Police officer was dispatched to the Sand Piper Motel located at 1967 Newport Boulevard, room 139, Costa Mesa, California, regarding two people fighting. The officer spoke with the victim and observed several small abrasions behind the victim's right ear that went to his back hairline and a small amount of dry blood around the abrasion. The victim said the injuries resulted from being grabbed by Respondent. Respondent admitted to the officer that he had been in a fight with the victim. Respondent told the officer he and the victim had been arguing during the Super Bowl game and he punched the victim in the nose with a closed, clenched fist. While speaking with Respondent, the officer noticed that he had slurred speech and a strong odor of alcohol coming from his breath. Respondent admitted that he had been drinking and the officer arrested Respondent for domestic violence.

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1 c. As a result of the conviction, Respondent was sentenced to 3 years of informal
2 probation, ordered to violate no law, submit to search and seizure, not own, use, or possess any
3 type of dangerous or deadly weapon for 10 years, cooperate with his Probation Officer in any
4 plan for counseling or treatment, pay various fines and fees, pay restitution to the victim, serve 26
5 days in Orange County Jail, attend and complete the Domestic Violence Batterers' Treatment
6 Program (program to include alcohol and drugs component), complete 8 hours community service
7 as directed by the Volunteer Action Center, comply with all terms of the protective order, not to
8 have any contact with the victim, not to stalk, sexually abuse, harass, threaten, or commit any
9 violence upon the victim, their home, work, or children's school.

10 **FIFTH CAUSE FOR DISCIPLINE**

11 **(Using Alcohol to a Dangerous Extent)**

12 19. Respondent's license is subject to discipline under Code section 2762,
13 subdivision (b), in that Respondent used alcohol to an extent dangerous to himself and others as is
14 set forth in paragraphs 15, 17 and 18, above, which are incorporated by this reference.

15 **SIXTH CAUSE FOR DISCIPLINE**

16 **(Criminal Convictions Involving the Consumption of Alcohol)**

17 20. Respondent's license is subject to discipline under Code section 2762,
18 subdivision (c), in that Respondent was convicted of criminal offenses involving the consumption
19 of alcohol as is set forth in paragraphs 15, 17 and 18, above, which are incorporated by this
20 reference.

21 **SEVENTH CAUSE FOR DISCIPLINE**

22 **(Out-of-State Discipline)**

23 21. Respondent is subject to disciplinary action under Code section 2761,
24 subdivision (a)(4), on the grounds of unprofessional conduct, in that Respondent was disciplined
25 by the Nevada State Board of Nursing (Nevada Board). The circumstances are as follows:

26 22. On or about June 19, 2009, Respondent submitted a RN renewal application to the
27 Nevada Board. On that renewal application, Respondent attested that he had completed all
28 mandatory continuing education (CE) during the renewal period. On July 14, 2009, Respondent

1 was chosen by random for a CE audit and the Board sent a letter to Respondent requesting that he
2 send documentation in support of his attestation that he had completed the required CE.
3 Respondent did not respond to the audit or provide any of the documentation requested. Also, in
4 his renewal application to the Nevada Board, Respondent answered "yes" to question #2, which
5 asks: "Have you ever had a criminal conviction, including a misdemeanor or felony, or had a
6 civil judgment rendered against you?" However, Respondent failed to provide further
7 information about his criminal record when asked by the Board.

8 23. The Nevada Board charged that the foregoing conduct constitutes grounds for
9 disciplinary action for unprofessional conduct pursuant to NRS 632.320, subdivision (7) because
10 Respondent violated NAC 632.890, subdivision (26) when he failed to abide by any state or
11 federal statute or regulation pertaining to nursing. The Nevada Board also charged Respondent
12 with disciplinary action pursuant to NRS 632.320, subdivision (2), for an offense related to the
13 qualifications, functions or duties of a licensee.

14 24. On January 14, 2010, a hearing was held before the Nevada Board in the matter of
15 Charles Blankenship, Licensed Professional Nurse, Nevada License No. RN35715, Respondent.
16 At the time of the hearing, Respondent verbally stipulated to the allegations contained in the
17 Complaint and Notice of Hearing. The Board made Findings of Fact, Conclusions of Law, and
18 issued its Order on February 25, 2010, revoking Respondent's nursing license and barred him
19 from seeking reinstatement for a period of two years. It was further ordered that the revocation
20 shall become part of Respondent's permanent record, be published on the Board's list of
21 disciplinary actions, and be reported to the appropriate data banks.

22 PRAYER

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
24 and that following the hearing, the Board of Registered Nursing issue a decision:

- 25 1. Revoking or suspending Registered Nurse License Number 441591, issued to
26 Charles W.M. Blankenship;

1 2. Ordering Charles W.M. Blankenship to pay the Board of Registered Nursing the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code section 125.3;

4 3. Taking such other and further action as deemed necessary and proper.

5
6 DATED: _____

8/16/10

for *Stacie Bern*

LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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